

NAVAJO REFINING CO.

IBLA 98-371

Decided January 26, 1999

Appeal from a decision by the Associate Director, Minerals Management Service, denying an appeal from a decision issued by the Chief, Accounting Branch, Minerals Management Service directing payment of additional royalty due from sales during the period January through December 1984. MMS-91-0340-OCS.

Affirmed.

1. Accounts: Payments--Administrative Authority:  
Generally--Oil and Gas Leases: Royalties: Payments--  
Statute of Limitations

An MMS order finding an additional amount due in payment for royalty-in-kind oil delivered under a royalty-in-kind contract is not barred by the statute of limitations found at 28 U.S.C. § 2415(a) (1994) because that statute, which establishes time limits for commencement of judicial actions for damages on behalf of the United States, does not limit administrative proceedings within the Department of the Interior.

APPEARANCES: E. Edward Bruce, Esq., and Matthew S. Yeo, Esq., Washington, D.C., and Christopher Cella, Esq., Dallas, Texas, for Appellant Navajo Refining Company; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., and Sarah Inderbitzin, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Navajo Refining Company (Navajo Refining) has appealed a May 23, 1996, decision issued by the Associate Director, Minerals Management Service (MMS), denying an appeal from a July 31, 1990, decision by the Chief, Accounting Branch, MMS. The Chief had directed payment of \$547,088.98 as additional compensation due from sale of in-kind royalty oil sold to Navajo Refining during the period January through December 1984. 1/

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1/ The Board of Land Appeals received the case file for this appeal from MMS on June 26, 1998. This delay was apparently caused by MMS not having received a copy of the notice of appeal to this Board.

In October 1983, MMS and Navajo Refining entered into an agreement for the sale and purchase of royalty oil produced from specified offshore oil and gas leases (Contract No. 6300-84128). This agreement was for a term of 1 year, commencing January 1, 1984, and provided for valuation of the delivered oil in accordance with Department of the Interior regulations found in Title 30 of the Code of Federal Regulations and guidelines issued by MMS. (Art. V.) Navajo Refining was billed, based on actual royalty entitlements as reported to the MMS and subject to later adjustment. Billing was made 45 days after the month of entitlement with payment due the last day of the month in which billed. (Art. VI.) The product was delivered and payments made during the full term of the contract.

Some time after the end of the contract year, MMS conducted a final contract reconciliation, comparing actual payments made by Navajo Refining to the reported royalties accruing from the leases, as reported and adjusted on Report of Sale and Royalty Remittance forms (Form MMS-2014) submitted by the producers. On July 31, 1990, MMS issued an order, stating in pertinent part:

Royalty Oil Contract No. 6300-84128 with Minerals Management Service (MMS) expired on January 1, 1985. We have completed our contract reconciliation and have determined that the account has a balance due of \$547,088.98 as detailed on the enclosed invoice No. RIKB 08890009. [2/]

\* \* \* \* \*

This is the final invoice for this contract unless adjustments are warranted because of unforeseen circumstances.

Navajo Refining appealed this order to the Director of MMS.

In its notice of appeal to the Director, Navajo Refining stated as the reason for appeal that

the instant Notice of Appeal contests the timeliness of the invoice. Over six years have elapsed respecting some of the involved months, and over five years since the contract ended. It is clear that Navajo has been substantially prejudiced by this delay. Under the terms of the Contract, including Article VI,

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2/ This invoice contained 481 line items on 81 pages. The reconciliation entailed reviewing reports submitted by at least eight producers. The MMS accountants found reporting errors caused by unintentional double-reporting, incorrect adjustments, improper credits, and billings to wrong accounts. In all, the resulting adjustment of the entitlement amounts involved \$4,009,482.32 in charges and \$3,462,373.34 in credits, in line item amounts as small as \$1.57.

as well as applicable statutory and case law authority, this invoice is invalid on this basis.

(Notice of Appeal at 1.) Navajo Refining sought and received additional time to file further documents in support of its appeal, but no further documents were submitted.

In her May 23, 1996, decision the Associate Director, MMS, denied Navajo Refining's appeal. The basis for her determination was her conclusion that the statute of limitations, found at 28 U.S.C. § 2415 (1994), does not effect the merits of the dispute or the underlying right to recover the amounts owing under the contract because the statute does not limit administrative proceedings within the Department of the Interior. She also found that the language of the contract specifically contemplates adjustment based on the calculation of actual production and delivery. Navajo Refining then appealed to this Board.

In its Statement of Reasons for appeal to this Board Navajo contends that the Deputy Director's determination is contrary to judicial precedent and should be reversed. Specifically, it argues that the Deputy Director's holding conflicts with the language of 28 U.S.C. § 2415(a) (1994) and the opinion of the U.S. Court of Appeals for the Tenth Circuit in Phillips Petroleum Corp. v. Lujan, 4 F.3d 858 (10th Cir. 1993).

It is clear that the contract contemplated subsequent adjustment of the billing amount, based on adjustment of the actual royalty entitlements. Article VI of the contract reads as follows:

ARTICLE VI - PAYMENTS

The GOVERNMENT agrees to accept and the PURCHASER agrees to make payments for said royalty oil as follows:

PURCHASER will be billed based on entitlements as reported to the MMS.

First payment equivalent to an estimate of the first 30 days of royalty entitlements to be billed the 1st day of the second month of the contract period, with payment due the 15th day of the month in which billed.

This initial estimated payment will be held by the GOVERNMENT in a non-interest bearing account, and will be a credit on the final monthly billing. It will be subject to periodic adjustment, as deemed necessary, to reflect the current estimated value of the preceding 30 day entitlements.

Payment of actual royalty entitlements (subject to later adjustment) to be billed 45 days after the month of entitlement with payment due the last day of the month in which billed.

Payments will be made to the Minerals Management Service, \* \* \* by check or draft drawn \* \* \* to the order of "Department of the Interior -- MMS."

(Contract No. 6300-84128 at Article VI (emphasis added).) The only question is whether MMS was barred by the statute of limitations from making an adjustment and billing Navajo Refining for the amount due.

[1] The 6-year statute of limitations at 28 U.S.C. § 2415 (1994), which governs the time for commencing judicial actions brought by the United States, provides in part:

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later \* \* \*.

28 U.S.C. § 2415(a) (1994).

The propriety of applying the limitation set out in section 2415(a) and the decision in Phillips Petroleum Corp. v. Lujan, *supra*, have been addressed by this Board in a number of previous decisions with consistent result. The above quoted statute of limitation applies to judicial enforcement of administrative actions, but does not apply to the underlying administrative actions. See Amoco Production Co., 145 IBLA 281 (1998); Cenex, Inc., 145 IBLA 254 (1998); Texaco Exploration & Production, Inc., 140 IBLA 282, 284 (1997); Anadarko Petroleum Corp., 122 IBLA 141, 147 (1992); Marathon Oil Co., 119 IBLA 345, 352 (1991); Mobil Exploration & Producing U.S., Inc., 119 IBLA 76, 81, 98 I.D. 207, 210 (1991); Alaska Statebank, 111 IBLA 300, 311 (1989). In Alaska Statebank, *supra*, we specifically stated that a Departmental proceeding requiring payments which accrued more than 6 years before the proceeding began "is not an action for money damages brought by the United States, but rather is an administrative action not subject to the statute of limitations." *Id.* at 311; see Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994); Texaco, Inc., 138 IBLA 202, 204 (1997); Texaco Exploration & Production, Inc., 134 IBLA 267, 270-71 (1995).

The court holding in Phillips Petroleum Co. v. Lujan, *supra*, is not to the contrary. The 10th Circuit took notice that "[t]he parties agree that 28 U.S.C. § 2415(a) is the applicable statute for determining when the government must commence its action to collect the royalty underpayment." 4 F.3d at 860. This is an administrative action initiated after completion of a contract reconciliation which found that the account had a balance due. Under the authorities cited above, it is not subject to the statute of limitations. See Amoco Production Co., 144 IBLA 135, 139-40 (1998); Meridian Oil, Inc., 140 IBLA 135, 145-46 (1997).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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R.W. Mullen  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge